

STATE OF CALIFORNIA
DEPARTMENT OF CORPORATIONS

TEXT OF PROPOSED CHANGES
UNDER THE CORPORATE SECURITIES LAW OF 1968
PURSUANT TO NOTICE
DATED: May 29, 2001

1. Amend Section 260.102.19 to read:

260.102.19. Notice of Transaction for ~~Stock~~ Purchase or ~~Stock~~ Option Plans or
Agreements

(a) An issuer who effects a transaction under Section 25102(o) of the Code shall file a
notice of transaction with the Commissioner ~~within~~ not later than 30 days after the initial
issuance of a security in California (Section 25008 of the Code) in that transaction. The notice
shall be accompanied by the fee prescribed by Section 25608(y) of the Code.

(b) Each issuer (other than a California corporation) must also file a consent to service of
process (Form 260.165), unless it already has a consent to service of process on file with the
Commissioner.

(c) The following form is to be used for transactions covered by Section 25102(o) of the
Code.

(Department of Corporations

DEPARTMENT OF CORPORATIONS

Use Only)

FILE No., if any:

Fee Paid \$ _____

(Insert File Numbers(s) of Previous

Receipt No. _____

Filings Before the Department, If Any)

Document OP 16/00 -B

FEE: \$ _____

(See Corporations Code Section 25608(y) and Section 25608(e).

The fee is based on the current market value of the ~~shares~~ securities, or in the case of options, the underlying ~~shares~~ securities)

COMMISSIONER OF CORPORATIONS

STATE OF CALIFORNIA

Notice of Issuance of Securities Pursuant to Subdivision (o) of Section 25102 of the Corporations Code

1. Name of Issuer: _____

2. State of Incorporation or Organization: _____

3. Address of Principal Place of Business:

| | | | |
|-------------------|------|-------|----------|
| Number and Street | City | State | Zip Code |
|-------------------|------|-------|----------|

4. The security is issued pursuant to a: (Check One)

☐ ~~Stock~~ Purchase Plan or Agreement.

Name of Security: _____

Number of ~~Shares~~ Securities: _____

Price Per ~~Share~~ Security: \$ _____

☐ ~~Stock~~ Option Plan or Agreement.

Name and Number of Options: _____

Name and Number of the Underlying Securities: _____

Exercise Price Per ~~Share~~ Security: \$ _____

[] "Flexible" ~~Stock~~ Purchase/~~Stock~~ Option Plan or Agreement.

Name of Security/Option: _____

Number of ~~Shares~~ Securities/Options: _____

Name and Number of the Underlying Securities: _____

Price Per ~~Share~~ Security: \$ _____

5. Aggregate current market value of securities sought to be sold: _____

6. Date of Notice: _____

() Check if ~~Corporation~~ Issuer has a _____

a consent to service of process

Name of ~~Corporation~~ Issuer

on file with the Commissioner

Authorized Signature on Behalf of ~~Corporation~~ Issuer

Print Name and Title of Signatory

Name, Address and Phone Number of Contact Person:

Instructions: Each ~~corporation~~ issuer (other than a California corporation) filing a notice under Section 25102(o) must file a consent to service of process (Form 260.165), unless it already has a consent to service on file with the Commissioner.

1 Note: Authority cited. Sections 25102(o) and 25165, Corporations Code. Reference:
2 Sections 25102(o), 25165 and 25608(y), Corporations Code.

3
4 2. Amend Section 260.140.41 to read:

5 260.140.41. Employee, Director, Manager and Consultant Options.

6 Options granted to employees, directors, managers or consultants of the ~~issuing~~
7 ~~corporation~~ issuer or any of its affiliates, shall be pursuant to a plan or agreement that provides
8 for all of the following:
9

10 (a) The total number, or percentage as calculated in accordance with Section 260.140.45,
11 of ~~shares of stock~~ securities which may be issued and the persons eligible to receive options to
12 purchase these ~~shares~~ securities.

13 (b) An exercise price which is not less than 85% of the fair value (Section 260.140.50) of
14 the ~~stock~~ underlying security at the time the option is granted, except that the price shall not be
15 less than 110% of the fair value in the case of any person who owns ~~stock~~ securities possessing
16 more than 10% of the total combined voting power (as defined in Section 194.5 of the
17 Corporations Code in the case of a corporate issuer) of all classes of ~~stock~~ securities of the
18 ~~issuing corporation~~ issuer or its parent or ~~subsidiary corporations~~ subsidiaries possessing voting
19 power.

20 (c) An exercise period of not more than 120 months from the date the option is granted.
21

22 (d) The non-transferability of the ~~options other than~~ options, provided that the plan or
23 agreement may permit transferability by will, by the laws of descent and distribution, ~~by~~
24 ~~instrument to an inter vivos or testamentary trust in which the options are to be passed to~~
25 ~~beneficiaries upon the death of the trustor (settlor), or by gift to "immediate family" as that term~~

1 is defined in ~~17 C.F.R. 240.16a-1(e)~~, or as permitted by Rule 701 of the Securities Act of 1933,
2 as amended (17 C.F.R. 230.701).

3
4 (e) The proportionate adjustment of the number of ~~shares~~ securities purchasable and the
5 exercise price thereof under the option in the event of a stock split, reverse stock split, stock
6 dividend, recapitalization, ~~combination or~~ combination, reclassification or other distribution of
7 the issuing corporation's stock, issuer's equity securities without the receipt of consideration by
8 the issuer, of or on the issuer's class of securities underlying the option.

9 (f) The right to exercise at the rate of at least 20% per year over 5 years from the date the
10 option is granted, subject to reasonable conditions such as continued employment. However, in
11 the case of an option granted to officers, directors, managers or consultants of the issuer of the
12 option or the issuer of the underlying security or any of its affiliates, the option may become
13 fully exercisable, subject to reasonable conditions such as continued employment, at any time or
14 during any period established by the issuer of the option or the issuer of the underlying security
15 or any of its affiliates.

16 (g) Unless employment is terminated for cause as defined by applicable law, the terms of
17 the plan or option grant or a contract of employment, the right to exercise in the event of
18 termination of employment, to the extent that the optionee is entitled to exercise on the date
19 employment terminates, as follows:

20
21 (1) At least 6 months from the date of termination if termination was caused by death or
22 disability.

23 (2) At least 30 days from the date of termination if termination was caused by other than
24 death or disability.

1 (h) A plan termination date of ~~no~~ not more than 10 years from the date the plan is adopted
2 or the date the plan is approved by the security shareholders, whichever is ~~earlier~~. earlier, and an
3 agreement termination date of not more than 10 years from the date the agreement is entered into
4 or the date the agreement is approved by the security holders, whichever is earlier.

5 (i) ~~Shareholder approval of the plan~~ The plan or agreement must be approved by a
6 majority of the outstanding securities entitled to vote within 12 months before or after the date
7 the plan is ~~adopted~~. adopted or the date the agreement is entered into. Any option exercised
8 before security shareholder approval is obtained must be rescinded if security shareholder
9 approval is not obtained within 12 months before or after the plan is ~~adopted~~. adopted or the
10 agreement is entered into. Such ~~shares~~ securities shall not be counted in determining whether
11 such approval is obtained.

12 (j) Compliance with Section 260.140.46 of these rules regarding the information required
13 to be received by ~~employees~~. security holders.

14 (k) If provisions give an issuer the right to repurchase securities upon termination of
15 employment, the repurchase price will be presumptively reasonable if:
16

17 (1) it is not less than the fair market value of the securities to be repurchased on the date
18 of termination of employment, and the right to repurchase must be exercised for cash or
19 cancellation of purchase money indebtedness for the ~~shares~~ securities within 90 days of
20 termination of employment (or in the case of securities issued upon exercise of options after the
21 date of termination, within 90 days after the date of the exercise), and the right terminates when
22 the issuer's securities become publicly traded; or

23 (2) it is at the original purchase price, provided that the right to repurchase at the original
24 purchase price lapses at the rate of at least 20% of the ~~shares~~ securities per year over 5 years
25 from the date the option is granted (without respect to the date the option was exercised or

1 became exercisable) and the right to repurchase must be exercised for cash or cancellation of
2 purchase money indebtedness for the ~~shares~~ securities within 90 days of termination of
3 employment (or in the case of securities issued upon exercise of options after the date of
4 termination, within 90 days after the date of the exercise). In addition to the restrictions set forth
5 in clauses (1) and (2), the securities held by an officer, director, manager or consultant of the
6 issuer or an affiliate of the issuer may be subject to additional or greater restrictions.

7 (l) Compliance with Section 260.140.1 of these rules regarding the voting rights of
8 common stock; and similar equity securities.

9 Note: Authority cited: Section 25610, Corporations Code. Reference: Section 25140,
10 Corporations Code.

11
12
13 3. Amend Section 260.140.42 to read:

14 260.140.42. Employee, Director, Manager and Consultant Purchases.

15 ~~Shares~~ Securities sold to employees, directors, managers or consultants of the ~~issuing~~
16 ~~corporation~~ issuer or any of its affiliates shall be pursuant to a plan or agreement that provides
17 for all of the following:

18 (a) The total number of ~~shares~~ securities which may be issued and the persons eligible to
19 purchase ~~shares~~ securities under the plan or agreement.

20 (b) A purchase price of:

21 (1) At least 85% of the fair value (Section 260.140.50) of the ~~stock~~ security at the time
22 the person is granted the right to purchase ~~shares~~ securities under the plan or agreement, or at the
23 time the purchase is consummated; or
24
25

1 (2) At least 100% of the fair value (Section 260.140.50) of the ~~stock~~ security either at the
2 time the person is granted the right to purchase ~~shares~~ securities under the plan or agreement, or
3 at the time the purchase is consummated, in the case of any person who owns ~~stock~~ securities
4 possessing more than 10% of the total combined voting power (as defined in Section 194.5 of the
5 Corporations Code in the case of a corporate issuer) of all classes of ~~stock~~ securities of the
6 ~~issuing corporation~~ issuer or its parent or ~~subsidiary corporations~~ subsidiaries possessing voting
7 power.

8 (c) The nontransferability of the employee's, director's, manager's or consultant's rights
9 to purchase ~~shares~~ securities under the plan or agreement, provided that the plan or agreement
10 may permit transfer of the rights to purchase securities other than by will, by or the laws of
11 descent and distribution, or as permitted by Rule 701 of the Securities Act of 1933, as amended
12 (17 C.F.R. 230.701).

13 (d) The proportionate adjustment of the number of ~~shares~~ securities allocated to an
14 employee, director or consultant under the plan or agreement in the event of a stock split, reverse
15 stock split, stock dividend, recapitalization, ~~combination or~~ combination, reclassification or other
16 distribution of the ~~issuing corporation's stock~~ issuer's equity securities without the receipt of
17 consideration by the issuer, of or on the issuer's class of securities subject to the purchase right.

18 (e) A plan termination date of not more than 10 years from the date the plan is adopted or
19 the date the plan is approved by the ~~shareholders~~ security holders, whichever is earlier, and an
20 agreement termination date of not more than 10 years from the date the agreement is entered into
21 or the date the agreement is approved by the security holders, whichever is earlier.

22 (f) ~~Shareholder approval of the~~ The plan or agreement must be approved by a majority of
23 the outstanding securities entitled to vote within 12 months before or after the plan is adopted or
24 the date the agreement is entered into. Any ~~shares~~ securities purchased before security
25 shareholder approval is obtained must be rescinded if security ~~shareholder approval is not~~

1 obtained within 12 months before or after the plan is adopted or the agreement is entered into.

2 Such ~~shares~~ securities shall not be counted in determining whether such approval is obtained.

3 (g) Compliance with Section 260.140.46 of these rules regarding the information required
4 to be received by ~~employees~~ security holders.

5 (h) If provisions give an issuer the right to repurchase securities upon termination of
6 employment, the repurchase price will be presumptively reasonable if:

7
8 (1) it is not less than the fair market value of the securities to be repurchased on the date
9 of termination of employment, and the right to repurchase must be exercised for cash or
10 cancellation of purchase money indebtedness for the ~~shares~~ securities within 90 days of
11 termination of employment, and the right terminates when the issuer's securities become
12 publicly traded; or

13 (2) it is at the original purchase price, provided that the right to repurchase at the original
14 purchase price lapses at the rate of at least 20% of the ~~shares~~ securities per year over 5 years
15 from the date the option is granted (without respect to the date option was exercised or became
16 exercisable) and the right to repurchase must be exercised for cash or cancellation of purchase
17 money indebtedness for the ~~shares~~ securities within 90 days of termination of employment. In
18 addition to the restrictions set forth in clauses (1) and (2), the securities held by an officer,
19 director, manager or consultant of the issuer or an affiliate of the issuer may be subject to
20 additional or greater restrictions.

21 (i) Compliance with Section 260.140.1 of these rules regarding the voting rights of
22 common stock: and similar equity securities.

23 Note: Authority cited: Section 25610, Corporations Code. Reference: Section 25610,
24 Corporations Code.
25

1 4. Amend Section 260.140.45 to read:

2 260.140.45. Limitation on Number of ~~Shares~~ Securities.

3
4 (a) The total number of ~~shares~~ securities issuable upon exercise of all outstanding options
5 [exclusive of rights described in Section 260.140.40 and warrants described in Sections
6 260.140.43 and 260.140.44 of these rules, and any ~~stock~~ purchase plan or agreement as described
7 in Section 260.140.42 of these rules (provided that the ~~stock~~ purchase plan or agreement
8 provides that all ~~shares~~ securities will have a purchase price of 100% of the fair value (Section
9 260.140.50) of the ~~stock~~ security either at the time the person is granted the right to purchase
10 ~~shares~~ securities under the plan or agreement or at the time the purchase is consummated)], and
11 the total number of ~~shares~~ securities called for under any ~~stock~~ bonus or similar plan or
12 agreement shall not exceed a number of ~~shares~~ securities which is equal to 30% of the then
13 outstanding ~~shares~~ securities of the issuer (convertible preferred or convertible senior common
14 shares of stock will be counted on an as if converted basis), exclusive of ~~shares~~ securities subject
15 to promotional waivers under Section 260.141, unless a percentage higher than 30% is approved
16 by at least two-thirds of the outstanding ~~shares~~ securities entitled to vote.

17 (b) The 30% limitation set forth in this Rule, or such other percentage limitation as may
18 be approved pursuant to this Rule, shall be deemed satisfied if the plan or agreement provides
19 that at no time shall the total number of ~~shares~~ securities issuable upon exercise of all
20 outstanding options and the total number of securities provided for under any bonus or similar
21 plan or agreement of the issuer exceed the applicable percentage as calculated in accordance with
22 the conditions and the exclusions of this Rule, based on the ~~shares~~ securities of the issuer which
23 are outstanding at the time the calculation is made.

24 Note: Authority cited: Section 25610, Corporations Code. Reference: Section 25140,
25 Corporations Code.

1
2 5. Amend Section 260.140.46 to read:

3
4 260.140.46. Information to ~~Employees~~ Security Holders.

5 Plans or agreements pursuant to which securities are to be issued to employees,
6 consultants, managers or ~~and~~ directors (including ~~stock~~ option, ~~stock~~ purchase and ~~stock~~ bonus
7 plans) shall provide that the security holder(s) will receive financial statements at least annually.
8 This section does not require the use of financial statements in accordance with Section 260.613
9 of these rules. This section shall not apply when issuance is limited to key employees whose
10 duties in connection with the issuer assure them access to equivalent information.

11
12 o 0 o
13
14
15
16
17
18
19
20
21
22
23
24
25